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Attorneys for Defendants,  
**COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY**  
*(Defendants is exempt from filing fees pursuant to Government Code § 6103)*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Plaintiffs,

v.

COUNTY OF LOS ANGELES;  
SHERIFF DEPUTY BADGE  
NUMBER 404532; And DOES 1  
through 10,

Defendants.

**Case No.: 2:22-cv-05367 RGK(MAAx)**

**DEFENDANTS' MOTION IN  
LIMINE NO. 1 TO PRECLUDE  
ANY EVIDENCE, ARGUMENT OR  
TESTIMONY RE: PRIOR OR  
SUBSEQUENT COMPLAINTS,  
DISCIPLINE, ADMINISTRATIVE  
INVESTIGATIONS OR  
PROCEEDINGS, OR OTHER  
ALLEGED INCIDENTS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

*(Declaration Of Molshree Gupta, Esq. Filed  
Concurrently)*

Action Filed: August 3, 2022

**Pretrial Conference: July 10, 2023**

Trial Date: July 25, 2023

Assigned to:

Hon. R. Gary Klausner, District Judge  
Courtroom 850

All Discovery Matters Referred to:

Hon. Maria A. Audero, District Judge

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT defendants COUNTY OF LOS ANGELES and  
3 SERGEANT TRAVIS KELLY (collectively “Defendants”) hereby move this Court for  
4 an order in limine to preclude Plaintiff JOSHUA ASSIFF and his counsel from  
5 introducing at trial any evidence, references to evidence, witness testimony, contentions,  
6 or cross-examination relating to claims, lawsuits, settlements, verdicts, judgments,  
7 complaints, discipline, administrative investigations or proceedings, or other alleged  
8 incidents concerning any of the individual law enforcement officers in this case or any  
9 other member of the Los Angeles County Sheriff’s Department.

10 Defendants bring this Motion on the grounds that such evidence is irrelevant to the  
11 issues to be tried; amounts to inadmissible character evidence; is more prejudicial than it  
12 is probative; lacks sufficient evidentiary foundation; and would therefore only serve to  
13 unduly prejudice defendants, waste time, confuse the issues, and mislead the jury.

14 Defendants further move this Court to instruct plaintiffs and their counsel and to  
15 require them to advise all witnesses:

16 1. Not to attempt to convey to the jury, directly or indirectly, any of the facts  
17 mentioned in this Motion without first obtaining permission of the Court outside the  
18 presence and hearing of the jury;

19 2. Not to make any reference to the fact that this Motion has been filed; and

20 3. To warn and caution each of plaintiffs’ witnesses to strictly follow the same  
21 instructions.

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1 This motion is made following compliance with the meet and confer requirements  
2 of Local Rule 7-3. This Motion is based upon the Memorandum of Points and  
3 Authorities and Declaration of Molshree Gupta, served herewith, upon the pleadings and  
4 papers on file herein, and upon such other and further oral argument and evidence as  
5 may be presented at the hearing on this Motion.

6  
7 Dated: June 9, 2023

KJAR, MCKENNA & STOCKALPER, LLP

8  
9 By:   
10 PATRICK E. STOCKALPER  
11 MOLSHREE GUPTA  
12 Attorneys for Defendants,  
13 COUNTY OF LOS ANGELES and SERGEANT  
14 TRAVIS KELLY  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION & ARGUMENT**

This is a 42 U.S.C. §1983 alleged excessive force case arising out of a traffic stop and subsequent arrest of Plaintiff JOSHUA ASSIFF (“Plaintiff”) by Defendant SERGEANT TRAVIS KELLY (“Defendant Kelly”) on September 24, 2021, in the Santa Clarita Valley. Plaintiff alleges that Defendant Kelly pulled him over for no apparent reason; tasered, choked, pepper sprayed and beat him; and arrested him without probable cause, all in violation of his constitutional rights.

Defendants anticipate Plaintiff will attempt to introduce other claims, lawsuits, settlements, verdicts, judgments, complaints, discipline, administrative investigations or proceedings, or other alleged incidents concerning Defendant Kelly, and possibly other members of the Los Angeles County Sheriff’s Department (“LASD”). For the reasons set forth below, Defendants respectfully request the Court preclude such evidence at trial.

**II. LEGAL AUTHORITY FOR MOTIONS IN LIMINE**

A motion in *limine* “is any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United States* (1984) 469 U.S. 38, 40. Motions in *limine* are well recognized in practice and by case law. See *Ohler v. United States* (2000) 529 U.S. 753, 758; *United States v. Cook* (9th Cir. 1979) 608 F.2d 1175, 1186.

The purpose is to avoid the futile attempt of “unring[ing] the bell” when jurors have seen or heard inadmissible evidence, even when stricken from the record. See *Brodit v. Cambra* (9th Cir.2003) 350 F.3d 985, 1004-05 (citing *Kelly v. New West Fed. Sav.* (1996) 49 Cal. App. 4th 659, 669). Motions in *limine* also serve to streamline trials, by settling evidentiary disputes in advance. See *U.S. v. Tokash* (7th Cir. 2002) 282 F.3d 962, 968.

1 **III. THE SUBJECT EVIDENCE IS WHOLLY IRRELEVANT TO THE CLAIMS**  
2 **IN THIS CASE**

3 Evidence is relevant if it has any tendency to make a fact more or less probable  
4 than it would be without the evidence, and the fact is of consequence in determining the  
5 action. Fed. R. Evid. 401. Relevant evidence is admissible unless barred by the U.S.  
6 Constitution, a federal statute, the Federal Rules of Evidence, or other U.S. Supreme  
7 Court rules. Fed. R. Evid. 402. Irrelevant evidence is not admissible. Fed. R. Evid. 402.

8 Here, claims, lawsuits, settlements, verdicts, judgments, complaints, discipline,  
9 administrative investigations or proceedings, and any other alleged incidents concerning  
10 Defendant Kelly or any other member of the LASD have no tendency to make any  
11 disputed fact that is of consequence to the determination of this action more or less  
12 probable. The number and nature of incidents in which a deputy has been involved is a  
13 reflection of that officer's assignments, the particular circumstances giving rise to each  
14 incident, and the inherent nature of policing. What is relevant to the claims alleged in  
15 this case is whether there were complaints of Defendant Kelly's use of force or arrests,  
16 whether such complaints were investigated and resulted in disciplinary action, and the  
17 results of investigations involving excessive use of force or a departure from, or  
18 violation of, established procedures or policy.

19 Therefore, such evidence would be irrelevant, and in turn, the Court should  
20 preclude it from trial.

21 **IV. THE SUBJECT EVIDENCE SHOULD BE BARRED AS INADMISSIBLE**  
22 **CHARACTER EVIDENCE**

23 Evidence of a person's character or character trait is not admissible to prove that  
24 on a particular occasion the person acted in accordance with the character or trait. Fed.  
25 R. Evid. 404. The Ninth Circuit has long held that evidence of prior acts of a Defendant  
26 police officer in a civil rights action is inadmissible. *Gates v. Rivera* (9th. Cir. 1993) 993  
27 F.2d, 697, 700. In *Gates*, the defendant police officer, Rivera, was allowed to testify that  
28 in his 16-1/2 years as a police officer, he had not shot anyone and that he had never

1 before discharged his weapon. *Id.* at 700. The Appellate Court noted that such evidence  
2 was not admissible in a civil rights action under Federal Rules of Evidence 404, and held  
3 that such evidence was irrelevant since intent was not an issue in an excessive force case.  
4 *Ibid.* Rather, the question to be resolved is whether objectively, the officer's use of force  
5 was reasonable. *Ibid.*

6 "In any event, issues of motive and intent are especially irrelevant in [excessive  
7 force cases]. A test "in an excessive force case is an objective one." [Citation omitted].  
8 Thus, "an officer's evil intentions will make a 4th Amendment violation out of an  
9 objectively reasonable use of force; nor will an officer's good intentions make an  
10 objectively unreasonable use of force constitutional." *Morgan v. City Marmaduke, Ark.*  
11 (8th Cir. 1992) 958 F.2d 207, 212, citing *Graham v. Connor* (1989) 490 U.S. 386, 397,  
12 109 Sup. Ct. 1865, 104 L.E.2d 443.

13 Here, the reason Plaintiff would attempt to introduce evidence of claims, lawsuits,  
14 settlements, verdicts, judgments, complaints, discipline, administrative investigations or  
15 proceedings, or any other alleged incidents concerning Defendant Kelly or any other  
16 member of the LASD would be to show the bad character of Defendant Kelly and the  
17 LASD (i.e. Defendant County) in general. That kind of evidence is explicitly barred by  
18 Rule 404, as it would amount to inadmissible character evidence. Plaintiff will argue that  
19 during the subject incident Defendant Kelly acted in accordance with his alleged bad  
20 character. Accordingly, the Court should preclude this evidence.

21 **V. THE SUBJECT EVIDENCE SHOULD BE EXCLUDED PURSUANT TO FRE**  
22 **403**  
23

24 The court may exclude relevant evidence if its probative value is substantially  
25 outweighed by a danger of one or more of the following: unfair prejudice, confusing the  
26 issues, misleading the jury, undue delay, wasting time, or needlessly presenting  
27 cumulative evidence. Fed. R. Evid. 403. Rule 403 requires the prejudice be "unfair."  
28 *U.S. v. Young* (D.S.D. 1990) 754 F. Supp. 739, 742. "Unfair" in this context means the

1 evidence has an undue tendency to suggest a jury decision based upon an improper basis,  
2 usually an emotional one. *Id.* at 742. Additionally, where evidence is not closely related  
3 to the issue being charged and is otherwise irrelevant, the probative value of such  
4 evidence is substantially outweighed by the danger of unfair prejudice. *U.S. v. Guerrero*  
5 (9th Cir. 1984) 756 F.2d 1342, 1348; *U.S. v. Black* (9th Cir. 1994) 20 F.3d 1458, 1464.

6 In *Maddox v. City of Los Angeles* (9th Cir. 1986) 792 F.2d 1408, the Ninth Circuit  
7 upheld the trial court's ruling in denying the admissibility of an internal affairs  
8 investigation on grounds the police officers would be unduly prejudiced by introduction  
9 of subsequent disciplinary proceedings: "The jury might have inferred that Officer Harris  
10 was guilty of wrongdoing merely because the police department conducted disciplinary  
11 proceedings. The jury might have given unfair or undue weight to this evidence or they  
12 might have been confused as to the relevance of the evidence . . . ." *Id.* at 1417.

13 Even if evidence of other claims, lawsuits, settlements, verdicts, judgments,  
14 complaints, discipline, administrative investigations or proceedings, or other alleged  
15 incidents concerning Defendant Kelly, or any other member of LASD, had any probative  
16 value, which it does not, it would be substantially outweighed by a danger of unfair  
17 prejudice to Defendants. If the jury hears evidence of any other purported wrongdoing  
18 by Defendant Kelly, or any other member of LASD, it will likely punish defendant  
19 County of Los Angeles for that other wrongdoing, regardless of the liability in this case.

20 Moreover, because the subject evidence has no probative value, introduction of  
21 such evidence will inherently waste time. Moreover, by introducing evidence of other  
22 claims, lawsuits, settlements, verdicts, judgments, complaints, discipline, administrative  
23 investigations or proceedings, or other alleged incidents concerning Defendant Kelly or  
24 any other member of LASD, the jury will likely believe that it must decide issues  
25 relating to those other incidents, thereby confusing the issues and misleading the jury. In  
26 short, any probative value of such evidence is substantially outweighed by the  
27 probability that its admission will create substantial danger of unfair prejudice, of  
28

1 confusing the issues, and of misleading the jury, and waste time. For this reason as well,  
2 the Court should preclude the subject evidence from trial.

3 **VI. MEET AND CONFER**

4 On June 8, 2023, and on June 9, 2023, counsel for Defendants wrote to counsel for  
5 Plaintiff to request to meet and conferred on the substance of this Motion in *Limine*.  
6 Gupta Decl. ¶ 4. No agreement could be reached. Gupta Decl. ¶ 4.

7 **VII. CONCLUSION**

8 Based on the foregoing, defendants respectfully request the Court grant this  
9 Motion in *Limine*, and preclude plaintiffs and their counsel from introducing at trial any  
10 evidence, references to evidence, witness testimony, contentions, or cross examination  
11 relating to other claims, lawsuits, settlements, verdicts, judgments, complaints,  
12 discipline, administrative investigations or proceedings, or other alleged incidents  
13 concerning Defendant Kelly or any other member of LASD.

14  
15 Dated: June 9, 2023

KJAR, MCKENNA & STOCKALPER, LLP

16  
17  
18 By:



PATRICK E. STOCKALPER

MOLSHREE GUPTA

Attorneys for Defendants,

COUNTY OF LOS ANGELES and SERGEANT

TRAVIS KELLY



**CERTIFICATE OF SERVICE**

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On June 9, 2023, I served the foregoing document described as **DEFENDANTS' MOTION IN LIMINE NO. 1 TO PRECLUDE ANY EVIDENCE, ARGUMENT OR TESTIMONY RE: PRIOR OR SUBSEQUENT COMPLAINTS, DISCIPLINE, ADMINISTRATIVE INVESTIGATIONS OR PROCEEDINGS, OR OTHER ALLEGED INCIDENTS; MEMORANDUM OF POINTS AND AUTHORITIES** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

**By Mail** I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX **By Email** Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is [mnixon@kmslegal.com](mailto:mnixon@kmslegal.com).

**By Personal Service** I caused such document to be Personally Served on the parties listed in the Service List.

XX **State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 9, 2023, at El Segundo, California.

  
\_\_\_\_\_  
Maria Nixon

**SERVICE LIST**

**Assiff, Joshua vs. County of Los Angeles, et al.**

Central District- Case No.: 2:22-cv-05367 RGK(MAAX)

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